

§ 821.26

49 CFR Ch. VIII (10–1–02 Edition)

§ 821.26 Motion to dismiss petition for review for lack of standing.

Upon motion by the Administrator within the time limitation for filing an answer, a petition for review shall be dismissed for lack of standing in either of the following instances:

(a) If the petitioner's certificate at the time of the denial or renewal thereof was under an order of suspension; or

(b) If the petitioner's certificate had been revoked within one year of the date of the denial or renewal thereof, unless the order revoking such certificate provided otherwise.

Subpart D—Special Rules Applicable to Proceedings Under 49 U.S.C. 44709

§ 821.30 Initiation of proceedings.

(a) *Appeal.* A certificate holder may file with the Board an appeal from an order of the Administrator amending, modifying, suspending, or revoking a certificate. The appeal shall be filed with the Board within 20 days from the time of service of the order and be accompanied with proof of service on the Administrator.

(b) *Contents.* Each appeal shall contain a concise but complete statement of the facts relied on and the relief sought. It shall identify the Administrator's order and any certificate affected and shall recite the Administrator's action from which the appeal is sought. It shall also contain proof of service on the Administrator.

(c) *Effect of timely appeal with the Board.* Timely filing with the Board of an appeal from an order of the Administrator shall postpone the effective date of the order until final disposition of the appeal by the law judge or the Board, except in emergency proceedings.

[58 FR 11381, Feb. 25, 1993, as amended at 59 FR 59048, Nov. 15, 1994]

§ 821.31 Complaint procedure.

(a) *Filing, time of filing, and service on respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint. The complaint shall be filed by the Administrator with the Board within 10 days

after the service date of the notice of appeal.

(b) *Contents of complaint.* If the Administrator claims that respondent lacks qualification as an airman, the order filed as the complaint, or an accompanying statement shall recite on which of the facts pleaded this contention is based.

(c) *Answer to complaint.* The respondent shall file an answer to the complaint within 20 days of service of the complaint upon him or her by the Administrator. Failure to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered. Respondent's answer shall also include any affirmative defense that respondent intends to raise at the hearing. A respondent may amend his or her answer to include any affirmative defense in accordance with the requirements of § 821.12(a). In the discretion of the law judge, any affirmative defense not so pleaded may be deemed waived.

[40 FR 30243, July 17, 1975, as amended at 49 FR 28250, July 11, 1984, 59 FR 59048, Nov. 15, 1994]

§ 821.32 Burden of proof.

In proceedings under 49 U.S.C. 44709, the burden of proof shall be upon the Administrator.

[40 FR 30243, July 17, 1975, as amended at 65 FR 42639, July 11, 2000]

§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under 49 U.S.C. 44709, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

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(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint.

(3) If the law judge wishes some clarification as to the Administrator's factual assertions of good cause, he or she shall obtain this from the Administrator in writing, with due service made upon the respondent, and proceed to an informal determination of the good cause issue without a hearing. A hearing to develop facts as to good cause shall be held only where the respondent raises an issue of fact in respect of the Administrator's good cause issue allegations.

(b) In those cases where the complaint alleges lack of qualification of the certificate holder:

(1) The law judge shall first determine whether an issue of lack of qualification would be presented if any or all of the allegations, stale and timely, are assumed to be true. If not, the law judge shall proceed as in paragraph (a) of this section.

(2) If the law judge deems that an issue of lack of qualification would be presented by any or all of the allegations, if true, he or she shall proceed to a hearing on the lack of qualification issue only, and he or she shall so inform the parties. The respondent shall be put on notice that he or she is to defend against lack of qualification and not merely against a proposed remedial sanction.

[40 FR 30243, July 17, 1975, as amended at 54 FR 12203, Mar. 24, 1989; 65 FR 42639, July 11, 2000]

Subpart E—Law Judges

§ 821.35 Assignment, duties, and powers.

(a) *Assignment of law judge and duration of assignment.* The chief law judge shall assign a law judge to preside over the proceeding. Until such assignment, motions, requests, and documents shall be addressed to the Docket Section, Office of Administrative Law Judges, for handling by the chief law judge, who may handle these matters personally or who may delegate all or any of them

to other law judges for decision. After assignment, all motions, requests, and documents shall be addressed to that law judge. The authority of the assigned law judge shall terminate upon certification of the record to the Board, or upon expiration of the period within which appeals from initial decisions may be filed, or upon the law judge's withdrawal from the proceeding.

(b) *Powers of law judges.* Law judges shall have the following powers:

(1) To give notice of and to hold pre-hearing conferences and hearings and to consolidate proceedings which involve a common question of law or fact;

(2) To administer oaths and affirmations;

(3) To examine witnesses;

(4) To issue subpoenas and to take or cause depositions to be taken;

(5) To receive evidence and rule upon objections and offers of proof;

(6) To rule upon motions in assigned cases;

(7) To regulate the conduct of the hearing;

(8) To hold conferences, before or during the hearing for the settlement or simplification of issues;

(9) To dispose of procedural requests or similar matters; and

(10) To make initial decisions, and, if so directed by the Board, to certify records with or without recommended decisions.

(c) *Disqualification of a law judge.* A law judge shall withdraw from the proceedings if at any time he or she deems himself disqualified. If, prior to the initial decision, there is filed an affidavit of personal bias or disqualifications, with substantiating facts, and the law judge does not withdraw, the Board will determine the matter as a part of the record and decision in the proceeding, if an appeal from the law judge's initial decision is filed. The Board will not otherwise consider any claim of bias or disqualification as to the law judge's assignment to conduct the hearing. The Board, in its discretion, may order a hearing on a charge of bias or disqualification.

[40 FR 30243, July 17, 1975, as amended at 59 FR 59048, Nov. 15, 1994]